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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9720 OF 2014

KOTAK MAHINDRA BANK LIMITED ... APPELLANT(S)

VS.

COMMISSIONER OF INCOME TAX
BANGALORE AND ANR. ... RESPONDENT(S)

J U D G M E N T

NAGARATHNA, J.

This appeal has been filed assailing the judgment dated 06.07.2012, passed by the High Court of Karnataka at Bangalore, in Writ Appeal No. 2458 of 2010 whereby the judgment of the learned Single Judge dated 20.05.2010 passed in Writ Petition No. 12239 of 2008, remanding the matter to the Settlement Commission to determine afresh, the question as to immunity from levy of penalty and prosecution, was affirmed and the aforesaid Writ Appeal filed by the appellant herein, was dismissed.

2. The facts giving rise to the present appeal, in a nutshell are that the appellant-assessee, Kotak Mahindra Bank Limited (formerly, "M/s ING Vysya Bank Limited") is a Public Limited Company carrying on the business of banking and is assessed to tax in Bangalore where its

registered office is located. Apart from the business of banking, the appellant also carries out leasing business on receiving approval from the Reserve Bank of India (hereinafter "RBI" for short) *vide* Circular dated 19.02.1994. Thus, the appellant derives its income, *inter alia*, from banking activities as well as from leasing transactions.

2.1. The appellant filed its income tax returns for the assessment years 1994-1995 to 1999-2000 and assessment orders were passed up to assessment year 1997-1998 and the assessment for the subsequent years was pending. During the assessment proceedings for the assessment year 1997-1998, the Assessing Officer made certain additions and disallowances based on which the assessment already concluded for the assessment years 1994-1995 to 1996-1997 were proposed to be reopened. The Assessing Officer then passed an Assessment Order dated 30.03.2000 for the Assessment Year 1997-1998. The main issue pertained to the income in respect of the activity of leasing. As per the Assessment Order, the appellant had been accounting for lease rental received, by treating the same as a financial transaction. As a result, the lease rental was bifurcated into capital repayment portion and interest component. Only the interest component was offered to tax. In other words, the appellant treated such leases as loans granted to the "purported" lessees to purchase assets. In such cases, the ownership of the assets is vested with the

lessees. However, the appellant claimed depreciation on those assets under Section 32 of the Income Tax Act, 1961 (hereinafter referred to as "the Act" for the sake of convenience) though the appellant was not the owner of the assets for the purpose of the said transactions.

2.2. On 09.06.2000 the Assessing Officer issued a notice under Section 148 of the Act for the reassessment of income for the aforesaid assessment years. The Assessing Officer also passed a penalty order dated 14.06.2000 levying a penalty under Section 271 (1)(c) of the Act after being satisfied that the appellant had concealed its income as regards lease rental.

2.3. While various proceedings, such as an appeal before the CIT (A) for the assessment year 1997-1998, re-assessment proceedings for the assessment years 1994-1995 to 1996-1997 and regular assessment proceedings for the assessment years 1998-1999 and 1999-2000 were pending before various income tax authorities, the appellant, on 10.07.2000, approached the Settlement Commission at Chennai to settle its income tax liabilities under Section 245C (1) of the Act, by way of an application in Form No. 34B bearing No. 563/KNK-III/15/2000-IT. The appellant sought for determination of its taxable income for the assessment years 1994-1995 to 1999-2000, after considering the issues pertaining to the income assessable in respect of its leasing transaction; eligibility to avail depreciation in respect of leased assets; the quantum

of allowable deduction under Section 80M and exemption under Section 10(15) and 10(23G); and depreciation on the investments portfolio of the bank classified as permanent investments.

2.4. When matters stood thus, the concluded assessments for earlier assessment years were reopened by issuance of notices under Section 148 of the Act. The appellant filed returns under protest with respect to the said assessment years.

2.5. Before the Settlement Commission, the Respondents-Revenue raised a preliminary objection contending that the appellant did not fulfil the qualifying criteria as contemplated under Section 245C(1) and hence, the application filed by the appellant was not maintainable, as, under the said provision, the appellant was required to make an application in the prescribed manner containing full and true disclosure of its income which had not been disclosed before the Assessing Officer and also the manner in which such income had been derived. That unless there is a true and full disclosure there would be no valid application and the Settlement Commission will not be able to assume jurisdiction to proceed with the admission of the application. It was thus contended that the purported application made before the Settlement Commission was not an application as contemplated under section 245C (1) of the Act for the reason that the appellant had not made a full

and true disclosure of its income which had not been disclosed before the Assessing Officer.

2.6. After considering the contentions of both parties, the Settlement Commission passed an Order dated 11.12.2000 entertaining the application filed by the appellant under Section 245C and rejecting the preliminary objections raised by the Revenue. The Settlement Commission allowed the application filed by the appellant by way of a speaking order and permitted the appellant to pursue its claim under Section 245D. Thus, the application was proceeded further under Section 245D (1) of the Act.

2.7. The Revenue challenged the Order dated 11.12.2000 passed by the Settlement Commission before the High Court of Karnataka at Bangalore by way of Writ Petition No. 13111 of 2001. The Revenue questioned the jurisdiction of the Settlement Commission in entertaining the application filed by the appellant under Section 245C(1) of the Act.

2.8. The learned Single Judge of the High Court of Karnataka, after going through the legislative history of the provisions of Chapter-XIXA, accepted the argument advanced by the appellant that the proviso to Section 245C as it stood earlier, which enabled the Commissioner to raise an objection even at the threshold to entertain an application of

this nature had been later shifted to sub-section (l)(A) of Section 245D and from the year 1991, it had been totally omitted and in the light of such legislative history, it was not open to the Revenue to raise any such preliminary objection regarding maintainability of the application itself. It was further held that the application can be proceeded with by the Settlement Commission for determination of the same on merits and it was not necessary that the Revenue should be permitted to raise a preliminary objection as to the maintainability of the application.

The learned Single Judge disposed of the above Writ Petition by way of an Order dated 18.08.2005 in favour of the appellant herein by holding that notwithstanding any preliminary finding, it was still open to the Commissioner to agitate or to apprise the Commission of all the aspects of the matter that he may find fit to be placed before the Commission. The Single Judge was of the view that it was not necessary to examine the legal position that may require an interpretation of provisions of Section 245C at that stage when the matter itself was still at large before the Settlement Commission as the very object of Chapter-XIXA was to settle cases and to reduce the disputes and not to prolong litigation. Thus, the High Court disposed of the Writ Petition holding that it was open to the parties to raise all their contentions before the Commission at the stage of disposal of the application and the Commission may, independent of the findings which it has given under

the Order dated 11.12.2000, examine all the contentions and proceed to pass orders on merits in accordance with the provisions of the Act.

2.9. As a result of the Order dated 18.08.2005 passed by the High Court of Karnataka, the Settlement Commission heard both parties on merits as well as on the issue of maintainability. The Settlement Commission upheld the maintainability of the application filed by the appellant and passed an Order dated 04.3.2008 under Sections 245D(1) and 245D(4), determining the additional income at Rs.196,36,06,201/-. As regards the issue of immunity from penalty and prosecution, the Commission, having regard to the fact that the appellant had co-operated in the proceedings before the Settlement Commission and true and full disclosure was made by the appellant before the Commission in paragraph 18.2 of its Order granted immunity under Section 245H(1) from the imposition of penalty and prosecution under the Act and the relevant sections of the Indian Penal Code. Further, the Settlement Commission annulled the penalty levied by the Assessing Officer under Section 271(1)(c) for the assessment year 1997-1998 in respect of non-disclosure of lease rental income. The same was annulled considering that the non-disclosure was on account of RBI guidelines and subsequent disclosure on the part of the appellant, of additional income of the lease income before the Settlement Commission when the appellant realised the omission to disclose the

same as per income tax law. The other pertinent finding of the Settlement Commission are as under:

i. As regards the disclosure of income by the appellant, the Settlement Commission noted that the application had to be considered within the framework of law as on the date the application was filed i.e., 10.07.2000. On a reading of Section 245C (1), the Commission observed that many amendments have been made to Section 245C after its introduction in 1976 and what is clear from "the income disclosed before the Assessing Officer" is that it is the income disclosed in the return of income furnished and not income that could be computed on the basis of a scrutiny or interpretation of the documents accompanying the return. That one has to read the entire conspectus of the provisions of Sec 245C to interpret the true meaning of "income not disclosed before the Assessing Officer." That the statute is clear that the said phrase simply means income not disclosed in the return and not something additionally by way of income discovered in scrutiny.

ii. The Commission further noted that the appellant had realized while adhering to the RBI guidelines of accounting of lease income that there was an error in not disclosing the full lease rental receipts as per income tax law. Thus, the appellant offered additional income for tax under various heads, which were not considered by the Assessing Officer. Considering the nature and circumstances and

the complexities of the investigation involved, the Commission was of the view that the application was to be proceeded with under Section 245D (1) of the Act and that *prima-facie*, a full and true disclosure of income not disclosed before the Assessing Officer had been made by the appellant.

2.10. Being aggrieved by the Order dated 04.03.2008 passed by the Settlement Commission, the Respondent-Revenue preferred Writ Petition bearing No. 12239 of 2008 (T-IT) before the High Court of Karnataka assailing the said Order. The learned Single Judge of the High Court *vide* Order dated 20.05.2010 upheld the Order of the Settlement Commission as regards the jurisdiction to entertain the application and also as regards the correctness of the Order passed by the Settlement Commission in determining the tax liability, but found fault with the Commission in so far as granting immunity to the appellant from the levy of penalty and initiation of prosecution was concerned. The Single Judge was of the view that the reasoning of the Settlement Commission was vague, unsound and contrary to established principles and that the burden was on the appellant herein to prove that there was no concealment or wilful neglect on its part and in the absence of such evidence before the Settlement Commission, the Order granting immunity from penalty and prosecution was an illegal order. The learned Single Judge, thus, remanded the matter to the

Settlement Commission for the limited purpose of reconsidering the question of immunity from levy of penalty and prosecution and the Order of the Assessing Officer levying penalty, after providing an opportunity to both parties.

2.11. Being aggrieved by the remand order passed by the learned Single Judge, the appellant preferred Writ Appeal No. 2458 of 2018 before a Division Bench of the High Court, contending as under:

i. That the reasoning given by the learned Single Judge to remand the matter for fresh consideration was erroneous and against the provisions of the Act. That the learned Single Judge failed to appreciate that the orders passed by the Settlement Commission are conclusive except as otherwise provided in Chapter XIX-A of the Act. The orders passed by the Settlement Commission are final as to the matters stated therein, subject to constitutional remedies. However, such constitutional remedies could be availed only when the orders passed by the Settlement Commission are contrary to the provisions of the Act or have prejudiced the Revenue/assessee or that they are vitiated by bias, fraud or malice. Thus, the learned Single Judge erred in finding fault with the validity of the order after having approved the jurisdiction and procedure followed by the Settlement Commission.

ii. That the learned Single Judge ought to have appreciated that Section 245C contemplates full and true disclosure of income to be made before the Settlement Commission alone and to that extent the provisions of Section 245C are unambiguous and certain. The application to the Settlement Commission to be filed under Section 245C ought to contain full and true disclosure of income that was not disclosed in the returns/revised returns filed before the Assessing Officer. That the learned Single Judge misdirected himself in holding that there is a statutory requirement that concealment of particulars before the Assessing Officer would have a bearing while the Settlement Commission exercises its powers under Section 245H of the Act for grant of immunity from prosecution and penalty. That Section 245H bestows exclusively upon the Settlement Commission, the discretion to grant immunity to an applicant from prosecution for any offence under the Act or grant of immunity wholly or in part from the imposition of penalty under the Act. The only precondition for granting immunity to the applicant is that the applicant must have co-operated in the proceedings before the Settlement Commission and made full and true disclosure of his income and the manner in which such income has been derived before the Settlement Commission. Thus, the learned Single Judge erred in drawing reference to the possibility of concealment of income before the Assessing Officer.

iii. That the learned Single Judge failed to appreciate the difference between the provisions of Section 245H and Section 271(l)(c) of the Act. Section 245H does not contemplate offering of any explanation or evidence by an applicant to the satisfaction of the Settlement Commission. If the Settlement Commission is satisfied that an applicant has complied with the precondition specified therein, the Settlement Commission could exercise its discretion to grant immunity from prosecution and penalty. Therefore, there was no error committed by the Settlement Commission in granting immunity from prosecution and penalty.

2.12. In the meanwhile, Revenue preferred Special Leave Petition (C) CC No. 19663 of 2010 before this Court against the Order dated 20.05.2010 passed by the learned Single Judge in Writ Petition No. 12239 of 2008. On 06.01.2012, this Court directed the Special Leave Petition to stand over for eight weeks and directed the Settlement Commission to dispose of the matter remanded to it by the High Court. In pursuance of the Order dated 06.01.2012 passed by this Court, the Settlement Commission, Chennai, issued a notice in the remanded matter on 30.01.2012.

On 10.02.2012 the appellant moved an application before this Court seeking modification of its Order dated 06.01.2012 by issuing a direction to the High Court to dispose of Writ Appeal No. 2458 of 2010.

It was contended that the filing of a Special Leave Petition against the order of the learned Single Judge was not proper as a writ appeal should have been filed. That admittedly, Writ Appeal No. 2458 of 2010 was pending before the High Court and the Revenue suppressed this vital information while filing the Special Leave Petition. This Court by way of an Order dated 21.02.2012 recalled its earlier Order dated 06.01.2012 passed in SLP (C) CC No. 19663 of 2010 and directed the High Court to dispose of Writ Appeal No. 2458 of 2010 within a period of two months.

2.13. Following the same, a Division Bench of the High of Karnataka *vide* Order dated 06.07.2012 dismissed the Writ Appeal preferred by the appellant and upheld the Order passed by the learned Single Judge. It was observed that the Order of the learned Single Judge remanding the matter to the Settlement Commission for adjudication did not suffer from any material irregularity or illegality. The pertinent observations of the Division Bench of the High of Karnataka are as under:

i. On the question as to whether the Order dated 20.05.2010 passed by the learned Single Judge of the High Court in Writ Petition No. 12239 of 2008 would call for interference, on a reading of Section 245C (1) of the Act which governs the filing of an application by an assessee seeking settlement it was observed that the application made by an assessee, must contain full and true disclosure of his income which has not been disclosed before the Assessing Officer.

Further, on perusal of Section 245H of the Act which discusses the Commission's power to grant immunity from prosecution and penalty, it was observed that necessary ingredients for granting immunity from prosecution would be: (a) the assessee should have co-operated with the Settlement Commission in the proceedings before it; and (b) the assessee should have made a full and true disclosure of its income and the manner in which such income has been derived.

ii. Under Section 245H (1), the Settlement Commission, if satisfied that any assessee who makes the application for settlement under Section 245C, has co-operated with the Commission in the proceedings before it and has made a full and true disclosure of its income and the manner in which such income has been derived, may grant immunity from prosecution and also from the imposition of penalty, either wholly or in part with respect to the case covered by the settlement. Thus, Section 245H (1) cannot be read in isolation as Section 245C is embedded in 245H (1), and hence, both the Sections must be read harmoniously. Further, if in a given case such immunity is not granted, the Revenue would proceed to prosecute the assessee in a jurisdictional court. Once prosecution is lodged, the presumption is that there was *mens rea* on the part of the assessee to conceal the income by a smoke screen and thereby to evade tax. The Settlement Commission will have to

examine the application by lifting the veil to see as to whether there has been an intention to evade tax and then arrive at a conclusion and in the absence of such an exercise being undertaken by the Commission, the intention behind Section 245H (1) would become otiose.

iii. The Division Bench noted that as per the provision of Section 245D then prevalent, the Settlement Commission on receipt of an application filed under Section 245C had to call for a report from the Commissioner and on the basis of the material contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission was empowered to reject or allow the application to be proceeded with, within the prescribed period and it is in this background that the granting of immunity from prosecution ought to have been scrutinised by the Settlement Commission and the Single Judge in the instant case found that the same was not done, hence, the matter was rightly remanded.

2.14. Aggrieved by the Judgment dated 06.07.2012 in Writ Appeal No. 2458 of 2010, the appellant has preferred the instant Civil Appeal.

Submissions:

3. We have heard learned senior counsel Sri Shyam Divan, appearing on behalf of the appellant-assessee and learned Additional

Solicitor General, Sri Balbir Singh, appearing on behalf of the respondents-Revenue and perused the materials placed on record.

3.1. Sri Shyam Divan at the outset submitted that the judgment of the learned Single Judge of the High Court, as affirmed by the Division Bench by the impugned order, proceeds on a misdirection in law, in light of the facts of the case and therefore, the same is liable to be set aside by this Court. It was further submitted as follows:

i. That when, in the present case, the Settlement Commission rendered a positive finding that the appellant had extended cooperation and had made a true and full disclosure and thereafter, in exercise of power under Section 245H, the Commission granted immunity from prosecution and penalty to the appellant, the High Court ought not to have interfered with the decision of the Settlement Commission. That the Settlement Commission is the sole judge of the adequacy of and the nature of evidence placed before it and so long as there was cogent material and explanation which was furnished by the appellant-assessee, the High Court ought not to have interfered.

ii. That the High Court ought to have appreciated that the Assessing Officer may make all kinds of additions and make claims of evasion of tax by an assessee. However, the Order of the Assessing Officer is by no means the last word. There are appellate remedies which

provide remedies for an aggrieved assessee and until the assessment reaches finality, the conclusion of the Assessing Officer in the assessment Order is nothing but his own assertion. Such a stage had not been reached in the case of the appellant herein.

iii. Concealment of particulars before the Assessing Officer would not have a bearing while the Settlement Commission exercises its powers under Section 245H of the Act for grant of immunity from prosecution and penalty. That if an assessee has disclosed in the return of income his true income and the disclosure of income is full and complete, there is no reason for him to go before the Settlement Commission. Section 245C contemplates full and true disclosure of income to be made before the Settlement Commission only.

iv. That Section 245C does not contemplate any explanation or evidence that requires to be offered by an applicant to the satisfaction of the Settlement Commission and as such the Division Bench's judgment was liable to be quashed. Section 245C contemplates full and true disclosure of income to be made before the Settlement Commission and the same was made by the assessee. That the learned Single Judge of the High Court committed an error in holding that there is a statutory requirement that concealment of particulars before the Assessing Officer would have a bearing on the application filed before the Settlement

Commission, which is required to exercise its power under section 245H of the Act for granting immunity from prosecution and penalty.

3.2. With the aforesaid submissions, it was prayed that the present appeal be allowed and the judgment of the learned Single Judge of the High Court, as affirmed by the Division Bench in the impugned judgment dated 06.07.2013, be set aside, thereby restoring the Order of the Settlement Commission dated 04.03.2008.

3.3. *Per contra*, Sri Balbir Singh, learned Additional Solicitor General appearing on behalf of the respondents-Revenue submitted that the impugned judgment of the High Court is based on a correct appreciation of the law in the light of the facts of the present case and therefore, the same does not call for interference by this Court. It was further submitted as under:

i. That it is only when the completed assessments were re-opened by the Revenue and when penalty proceedings were initiated that the application was filed by the appellant under Section 245C (1) before the Settlement Commission. That there is a marked difference between the terms "discovered" and "disclosed" in as much as what was "discovered" by the Assessing Officer during the course of assessment proceedings could not form part of what was "disclosed" by the assessee in the application filed before the

Settlement Commission. However, in the present case, what has been "disclosed" in the application is the same as what was "discovered" by the Assessing Officer. The provisions of Section 245C being made applicable to an application filed by an assessee, the prime ingredient would be disclosure of such income which had not been disclosed in the return of income.

ii. That the Settlement Commission on receipt of an application filed under Section 245C had to call for a report from the Commissioner and on the basis of the material contained in such report, the Commission ought to have proceeded to consider the application filed by the assessee, as also the question of granting of immunity from penalty and prosecution. Since this procedure was not adhered to and the Settlement Commission, *de hors* any material to demonstrate that there was any wilful concealment on the part of the assessee to evade tax, went on to pass an order granting immunity under Section 245H (1) to the appellant-assessee from imposition of penalty and prosecution under the Act, the learned Single Judge rightly set aside the Order of the Commission to such extent only and remanded the said aspect of the matter for fresh consideration.

iii. That concealment of income before the Assessing Officer would have a bearing on the result of the application filed before the Settlement Commission. That a perusal of Section 245H (1) would

reveal that the same cannot be read in isolation as Section 245C is embedded in 245H (1). Therefore, the two provisions would have to be read harmoniously and when so read, it would emerge that in order to qualify for immunity under Section 245H, the assessee must not only co-operate with the Settlement Commission, but must also disclose income which was not reflected in the return of income, *vide* ***Ajmera Housing Corporation vs. Commissioner of Income Tax, (2010) 8 SCC 739***. However, in the present case, the assessee has not disclosed any income which was not reflected in the return of income, but has only brought to the notice of the commission the income that had escaped assessment, which was subsequently discovered by the Assessing Officer.

iv. Reliance was placed on the decision of this Court in ***Commissioner of Income Tax vs. B.N. Bhattacharjee, (1979) 4 SCC 121*** to contend that the provisions of Chapter XIX-A of the Act, were to be construed as having legislative intent behind them. That the policy of law as disclosed in the said Chapter is not to provide a shelter for tax dodgers, to subsequently obtain immunity from facing the consequences of tax evasion by simply approaching the Settlement Commission. That the Commission would have to use its power under Section 245(C) read with Section 245H of the Act sparingly and only in cases where there was no intention on the part of the assessee to evade tax. However, in the present case, the

Commission did not apply its mind to the issue as to, whether, the appellant-assessee had wilfully evaded tax, before proceeding to exercise its power under Section 245H of the Act. Hence, the matter was rightly remanded to the Commission to determine the issue as to grant of immunity to the assessee from levy of penalty and prosecution.

v. Next, Sri Balbir Singh, Ld. ASG, referred to the judgment of this Court in ***Commissioner of Income Tax vs. Express Newspapers Ltd., (1994) 2 SCC 374*** to contend that in a similar factual background, wherein the assessee had neither disclosed before the Settlement Commission any income which was not disclosed before the Assessing Officer, nor any details as to the manner in which such income was derived, this Court held that the conditions specified in Section 245C of the Act, were not complied with by the assessee and therefore, the Settlement Commission ought not to have entertained the application before it. In that context, it was submitted that the application in the present case also ought to have been dismissed *in limine* and the Commission ought not to have entertained the same.

3.4. In the light of the aforesaid contentions, learned ASG, Sri Balbir Singh submitted that the present appeal be dismissed as being devoid of merit and the judgment of the learned Single Judge of the High Court,

as affirmed by the Division Bench in the impugned judgment dated 06.07.2013, be upheld.

Points for Consideration:

4. Having heard the learned counsel for the respective parties and on perusal of the material on record, the following points would emerge for our consideration:

i. Whether the Division Bench of the High Court was right in affirming the findings of the learned Single Judge, to the effect that the Settlement Commission ought not to have exercised discretion under Section 245H of the Act and granted immunity to the assessee *de hors* any material to demonstrate that there was no wilful concealment on the part of the assessee to evade tax and on that ground, remanding the matter to the Commission for fresh consideration?

ii. What order?

Legal Framework:

5. Before proceeding further, it would be useful to refer to the legal framework relevant to the issues which arise in this appeal.

5.1. Chapter XIX-A of the Act was introduced by the Taxation Laws (Amendment) Act, 1975 w.e.f. 01.04.1976 for quick settlement of cases so that the tax due to the Department is realized at the earliest, by

approaching the Settlement Commission. Chapter XIX-A of the Act incorporates Sections 245A to 245M. Section 245C which is relevant for the purpose of this case provides the manner in which an application for settlement of cases is to be made before the Settlement Commission. An assessee seeking to settle a case with the Department is required under Section 245C to make a full and true disclosure of his income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived and the additional tax payable on such income.

5.2. Section 245D deals with the procedure to be followed by the Commission on receiving an application for settlement under Section 245C. Sub-section (1) of Section 245C enables the Commission to call for a report from the Commissioner. On the basis of the Commissioner's report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission may either allow the application to be proceeded with or reject the same. Sub-section (4) of Section 245D empowers the Settlement Commission to pass an order after examination of the records and the report submitted by the Commissioner, after hearing the applicant and the Commissioner, or their authorized representatives and examining any further evidence before it.

5.3. Section 245H of the Act bestows upon the Settlement Commission, discretion to grant immunity to an applicant from prosecution for any offence under the Act or under the Indian Penal Code, or from the imposition of any penalty under the Act, with respect to the case covered by the settlement. The grant of such immunity is subject to such conditions which the Commission may think it fit to impose. The precondition for granting immunity is that the applicant must have co-operated in the proceedings before the Commission and made a 'full and true disclosure' of his income and the manner in which such income has been derived.

5.4. For ready reference, the relevant provisions of Chapter XIX-A of the Act are extracted as under:

> "**245H. Power of Settlement Commission to grant immunity from prosecution and penalty**.—(1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 245C has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived, grant to such person, subject to such conditions as it may think fit to impose for the reasons to be recorded in writing, immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force 2 and also (either wholly or in part) from the imposition of any penalty under this Act, with respect to the case covered by the settlement:
>
> Provided that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 245C:

Provided further that the Settlement Commission shall not grant immunity from prosecution for any offence under the Indian Penal Code (45 of 1860) or under any Central Act other than this Act and the Wealth-tax Act, 1957 (27 of 1957) to a person who makes an application under section 245C on or after the 1st day of June, 2007.

(1A) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of settlement passed under sub-section (4) of section 245D within the time specified in such order or within such further time as may be allowed by the Settlement Commission, or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person had, in the course of the settlement proceedings, concealed any particular material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

(3) On and from 1st day of February, 2021, the power of the Settlement Commission under this section shall be exercised by the Interim Board and the provisions of this section shall *mutatis mutandis* apply to the Interim Board as they apply to the Settlement Commission."

Analysis:

6. On a close reading of the provisions extracted hereinabove, it emerges that under Section 245H(1) if the Settlement Commission is satisfied that any assessee who makes the application for settlement

under Section 245C, has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of its income and the manner in which such income has been derived, may grant immunity from prosecution or from the imposition of penalty, either wholly or in part with respect to the case covered by the settlement. The necessary ingredients for granting immunity from prosecution would be: (a) the assessee should have co-operated with the Settlement Commission in the proceedings before it; and (b) the assessee should have made a full and true disclosure of its income and the manner in which such income has been derived, to the satisfaction of the Commission. Therefore, what is of essence is that the assessee ought to have:

(a) made full and true disclosure before the Commission, and

(b) co-operated with the Commission in the proceedings before it.

6.1. Upon being satisfied as to the said ingredients, the Commission may grant immunity from prosecution or from the imposition of penalty, either wholly or in part with respect to the case covered by the settlement.

7. While Section 245C provides that the disclosures as to income "not disclosed before the Assessing Officer" must accompany the application filed before the Settlement Commission, Section 245H provides that if the assessee has co-operated with the Settlement

Commission and has made “full and true disclosure of his income”, the Settlement Commission may grant immunity from prosecution and penalty. It is the case of the Revenue that Section 245H (1) cannot be read in isolation as Section 245C is embedded in 245H (1), and hence, both the Sections must be read harmoniously. That when so read, the requirement under Section 245H would be that disclosure of income “not disclosed before the Assessing Officer” must be made before the Commission. According to the Revenue, in the present case, what had been "disclosed" in the application was the same as what was "discovered" by the Assessing Officer and therefore, the application of the assessee ought not to have been entertained by the Commission, and further, immunity under Section 245H ought not to have been granted.

7.1. In this regard, it is observed that even if the pre-conditions prescribed under Section 245C are to be read into Section 245H, it cannot be said that in every case, the material “disclosed” by the assessee before the Commission must be something apart from what was discovered by the Assessing Officer. What is of relevance is that the assessee offered to tax, income, in addition to the income recorded in the return of income. Section 245C read with Section 245H only contemplates full and true disclosure of income to be made before the Settlement Commission, regardless of the disclosures or discoveries

made before/by the Assessing Officer. It is to be noted that the Order passed by Assessing Officer based on any discovery made, is not the final word, for, it is appealable. However, the assessee may accept the liability, in whole or in part, as determined in the assessment order. In such a case, the assessee may approach the Settlement Commission making 'full and true disclosure' of his income and the manner in which such income has been derived. Such a disclosure may also include the income discovered by the Assessing Officer.

7.2. To say that in every case, the material "disclosed" by the assessee before the Commission must be something apart from what was "discovered" by the Assessing Officer, in our view, seems to be an artificial requirement. In every case, there may not even be additional income to offer, apart from what has been discovered by the Assessing Officer. The object of Chapter-XIXA is to settle cases and to reduce the disputes, and not to prolong litigation. Therefore, instead of preferring an appeal against the assessment order, the assessee may, by making a 'full and true disclosure' of income, approach the Settlement Commission and offer to tax income other than that disclosed in the return of income.

7.3. It is further to be noted that the power vested with the Settlement Commission under Section 245H is a discretionary power to be exercised if the Settlement Commission is satisfied that an applicant

has complied with the preconditions specified therein. It is trite that any judicial, quasi-judicial or administrative authority must while exercising discretion, direct itself properly in law and consider all the facts and material that it is bound to consider while excluding from consideration irrelevant aspects of the matter. While exercising power under Section 245H, read with Section 245C of the Act the relevant facts and material which ought to be considered by the Commission are:

i. the report which is to be submitted by the Commissioner, under Section 245D(1) of the Act;

ii. the disclosures made by the applicant before the Commission as to income, and the source of such income;

iii. any other relevant evidence let in by the assessee or the department.

7.4. We find that in the present case, the Settlement Commission has rightly considered the relevant facts and material and, accordingly, decided to grant immunity to the appellant from prosecution and penalty. We arrive at this conclusion having regard to the following aspects of the matter, recorded by the Settlement Commission:

i. The Commission in its order dated 04.03.2008, noted that the appellant had realized while adhering to the RBI guidelines of accounting of lease income that there was an error in not disclosing the full lease rental receipts as per income tax law. Thus, the

appellant offered additional income under various heads, which were not considered by the Assessing Officer. Considering the nature and circumstances and the complexities of the investigation involved, the Commission was of the view that the application was to be proceeded with under Section 245D (1) of the Act and that *prima-facie*, a full and true disclosure of income not disclosed before the Assessing Officer had been made by the appellant. The findings of the Commission to this effect are usefully extracted as under:

> "4.3 We have considered the rival submissions. We are of the opinion that there is no bar for banking companies to approach the Commission. The disclosure of the material facts in the return of income or the documents accompanying return of income is not a bar for the applicant to approach the Commission. In view of this, we hold that the applicant is eligible to approach the Commission.
>
> 5.1 Finally we have carefully gone through the settlement application and the confidential annexures and are satisfied that the complexities of investigation as brought out in the application do exist. We have also considered the nature and circumstances of the case as explained by the applicant's representative. The applicant is an established scheduled bank with several branches. The applicant has realized that when adhering to RBI guidelines of accounting of lease income there was an error in not disclosing the full lease rental receipts as per income tax law. In addition the applicant has offered additional income under various heads not considered by the Assessing Officer. We are satisfied that the nature and circumstances and the complexities of investigation involved do warrant the application to be proceeded with u/s 245D(1) of the Act. We are also reasonably satisfied that, prima facie, a full and true disclosure of income

> not disclosed before the Assessing Officer has been made by the applicant. Additionally, taking a practical view of the case, we are also concerned by the time taken to dispose of this application, particularly in respect of a scheduled bank. We feel that the matters need to be given a quietus and brought to close as speedy collection of taxes is also an important function of the Settlement Commission. We therefore allow the application to be proceeded with u/s 245D(1) of the Act."

The aforesaid findings of the Settlement Commission, demonstrate that it had applied its mind to the aspect of whether there was wilful concealment of income by the assessee. Having noted that non-disclosure was on account of RBI guidelines, which required a different standard of disclosure, the Commission decided to grant immunity to the appellant from prosecution and penalty. Accrodingly, the Commission passed the following order:

> "TERMS OF SETTLEMENT:
>
> 18.1 The computation of the undisclosed income and the tax payable thereon is furnished in the annexure 1 to 5 to this Order. Tax payable along with interest as per law shall be paid within 35 days of receipt of this order.
>
> 18.2 Considering the co-operation extended by the applicant in the completion of the present settlement proceedings and the true and full disclosure made, we grant immunity u/s 245H(1) from the imposition of penalty and prosecution under the income-tax Act and relevant sections of IPC, relating to the matters covered in the present order. Penalty u/s 271(1)(c) was levied by the Assessing Officer for AY 1997-98 in respect of non disclosure of lease rental as income. The penalty order is annulled considering that the non disclosure was on account of RBI guidelines and the

> subsequent disclosure of additional income of lease income before the Settlement Commission when the applicant realized the omission to disclose the same as per Income tax law. However, the immunity so granted shall be withdrawn, if it is subsequently found that the conditions prescribed in subsections 1(A)/(2) of Sec.245H are satisfied.
>
> 18.3 The Settlement Order passed in the above case shall be declared void, if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts."

ii. The Commission's order further reveals that the appellant offered additional income and disclosed particulars of the income pertaining to the following transactions/activities:

a) Two aspects of the appellant's leasing activity, namely, undeclared lease rent liable to income tax; additional income on account of disallowance of depreciation on 26 assets claimed to be leased.

b) Treatment of bonus payments to employees.

c) Treatment of share issue expenses.

d) Treatment of depreciation on permanent assets and securities.

iii. The Commission's order dated 11.12.2000, makes multiple references to the Report of the Commissioner, as required under Section 245D (1). Therefore, we find no substance in the submission of the Ld. ASG appearing on behalf of the Revenue that the procedure contemplated under Section 245D was not followed

and in the absence of a report, the Commission was not correct in entertaining the appellant's application for settlement.

7.5. In the light of the aforesaid discussion, we are of the view that the learned Single Judge of the High Court was not right in holding that the reasoning of the Settlement Commission was vague, unsound and contrary to established principles. Division Bench was also not justified in affirming such view of the learned Single Judge. The Commission, in our view, adequately applied its mind to the circumstances of the case, as well as to the relevant law and accordingly exercised its discretion to proceed with the application for settlement and grant immunity to the assessee from penalty and prosecution. The Order of the Commission dated 04.03.2008 did not suffer from such infirmity as would warrant interference by the High Court, by passing an order of remand.

8. It may be apposite at this juncture, to refer to the decision of this Court in ***Ashirvad Enterprises vs. State of Bihar, (2004) 3 SCC 624*** wherein it was stated that whether immunity from prosecution and penalty should be granted in a given case, has to be decided by the Commission by exercising its discretion, in the light of the facts and circumstances of each case. There is no straight jacket formula that would universally apply in every case. Where the Commission is satisfied that the applicant (a) has made full and true disclosure of his income and the manner in which such income was derived, and (b) has

co-operated with the Commission in the proceedings before it, immunity under Section 245H may be granted.

9. In the present case, as noted above, we find that the appellant placed material and particulars before the Commission as to the manner in which income pertaining to certain activities was derived and has sought to offer such additional income to tax. Based on such disclosures and on noting that the appellant co-operated with the Commission in the process of settlement, the Commission proceeded to grant immunity from prosecution and penalty as contemplated under Section 245H of the Act. The High Court ought not to have sat in appeal as to the sufficiency of the material and particulars placed before the Commission, based on which the Commission proceeded to grant immunity from prosecution and penalty as contemplated under Section 245H of the Act.

10. We are fortified in our view by the judgment of this Court in ***Jyotendrasinhji vs. S.I. Tripathi, 1993 Supp (3) SCC 389***, wherein it was observed that a Court, while exercising powers under Articles 32, 226 or 136 of the Constitution of India, as the case may be, may not interfere with an order of the Commission, passed in exercise of its discretionary powers, except on the ground that the order contravenes provisions of the Act or has caused prejudice to the opposite party. Interference may also be open on the grounds of fraud, bias or malice.

Therefore, this Court has carved out a very narrow scope for judicial review of the Commission's orders, passed in the exercise of its discretionary powers. Hence, we hold that sufficiency of the material and particulars placed before the Commission, based on which the Commission proceeded to grant immunity from prosecution and penalty as contemplated under Section 245H of the Act, are beyond the scope of judicial review, except under the circumstances set out in ***Jyotendrasinhji vs. S.I. Tripathi*** *(supra).*

11. We find that the judgment of this Court in ***Express Newspapers Ltd. (supra)***, sought to be relied upon by the Respondents, would not come to their aid in the present case. It is to be noted that the said judgment turns on its own facts. In the said case, the income tax authorities had made extensive investigation and inquiry, whereby they had collected voluminous material demonstrating large scale concealment of income on the part of the assessee therein. In that background, this Court observed that the assessee, having merely offered a part of such concealed income before the Commission, the application for settlement ought to have been rejected.

12. While we are mindful of the fact that the provisions of Chapter XIX-A of the Act are not to be employed so as to provide a shelter for tax dodgers to obtain immunity from facing the consequences of tax evasion by simply approaching the Settlement Commission, *vide* ***B.N.***

Bhattacharjee (supra), we are however of the view that in the present case, the Commission rightly exercised its discretion under Section 245H having regard to the *bona fide* conduct of the assessee of offering additional income for tax, apart from the income disclosed in the return of income.

13. Before parting with the record, we may add that having regard to the legislative intent, frequent interference with the orders or proceedings of the Settlement Commission should be avoided. We have already indicated the limited grounds on which an order or proceeding of the Settlement Commission can be judicially reviewed. The High Court should not scrutinize an order or proceeding of a Settlement Commission as an appellate court. Unsettling reasoned orders of the Settlement Commission may erode the confidence of the bonafide assessees, thereby leading to multiplicity of litigation where settlement is possible. This larger picture has to be borne in mind.

14. In light of the aforesaid discussion, we are of the view that the Order of the Settlement Commission dated 04.03.2008 was based on a correct appreciation of the law, in light of the facts of the case and the High Court ought not to have interfered with the same. Therefore, the judgment dated 06.07.2012, passed by the High Court of Karnataka at Bangalore in Writ Appeal No. 2458 of 2010 whereby the judgment of the learned Single Judge dated 20.05.2010, passed in Writ Petition No.

12239 of 2008, remanding the matter to the Settlement Commission to determine afresh, the question as to immunity from levy of penalty and prosecution was affirmed, is hereby set aside. Consequently, the order of the learned Single Judge is also set aside. The Order of the Settlement Commission dated 04.03.2008 is restored. The appeal is allowed.

Pending application (s), if any, stand disposed of in the aforesaid terms.

No order as to costs.

.....J.
(B.V. NAGARATHNA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
25th SEPTEMBER, 2023.